

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GUODING CHEN,

Plaintiff,

-against-

VERIFIED COMPLAINT

Civil No.: ***08 Civ. 6240***

UNITED STATES OF AMERICA,

Defendant
-----x

The plaintiff GUODING CHEN, by his attorneys, CAESAR & NAPOLI, complaining of the defendant, states as follows:

JURISDICTION AND BACKGROUND

1. The plaintiff is, and at all relevant times herein has been, a resident of the County of New York in the City and State of New York.
2. The defendant, the United States of America, is subject to suit under the provisions of the Federal Tort Claims Act, 28 U.S.C. §§1346(b), 2671, et. seq.
3. On October 15, 2007, in conformity with the requirements of 28 U.S.C. §2675, the plaintiff presented a written notice of claim to the Law Department of the United States Postal Service, setting forth the plaintiff's claim for damages in the amount of FIVE MILLION, FIVE THOUSAND, SEVEN HUNDRED SIXTY EIGHT DOLLARS & 89/100 (***\$5,005,768.89***). More than six (6) months have elapsed since this date and the federal agency in question has failed to make a final disposition of this claim.
4. Jurisdiction over this action is conferred upon this Court by 28 U.S.C. §1346(b).

Venue in this Court is proper under 28 U.S.C. §1402(b).

**AS AND FOR A CAUSE OF ACTION ON BEHALF
OF THE PLAINTIFF GUODING CHEN**

_____ 5. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "4" inclusive of this Verified Complaint as if more fully set forth herein.

6. Upon information and belief, on or about January 23, 2007, and at all times hereinafter mentioned, the defendant was the owner of a U.S. Postal Department mail truck bearing license plate number 9207979.

7. Upon information and belief, on January 23, 2007, and at all times hereinafter mentioned, the aforesaid vehicle was being driven by Michael E. Wiesenecker, in the course of his employment with the U.S. Postal Department.

8. Upon information and belief, on January 23, 2007, and at all times hereinafter mentioned, the plaintiff GUODING CHEN, was the operator of a motor vehicle bearing license plate number BWE1773, of the State of New York.

9. On January 23, 2007 a collision occurred between the aforesaid motor vehicles on Salem Road, at or near its intersection with Mills Road, in Burlington, New Jersey.

10. The foregoing occurrence was caused by and through the negligence of the defendant through its agents, servants and/or employees, in operating the aforesaid U.S. Postal truck in a negligent and careless manner, striking the vehicle operated by the plaintiff in the rear.

11. The action falls within the exception to CPLR Article 16 Limited Liability set forth in CPLR §1602(6).

12. The negligence of the defendant, as set forth above, is not protected by the discretionary function exception [§2680(a)] to the Federal Tort Claims Act.

13. As a result of the negligence of the defendant, as set forth above, the plaintiff, GUODING CHEN, suffered serious, permanent and painful injuries; past, present and future medical expenses; loss of income, impairment of earning capacity, loss of enjoyment of life, attorneys' fees and costs, all to his damage in the sum of FIVE MILLION, FIVE THOUSAND, SEVEN HUNDRED SIXTY EIGHT DOLLARS & 89/100 (**\$5,005,768.89**).

14. That by reason of the aforesaid occurrence, the plaintiff GUODING CHEN, sustained serious, severe and permanent injuries as defined by Section 671(4) of the Insurance Law of the State of New York.

15. That by reason of the aforesaid occurrence, the plaintiff GUODING CHEN, sustained qualifying injuries for recovery of general damages under the laws of the State of New Jersey.

WHEREFORE, the plaintiff demands judgment against the defendant in his Cause of Action herein, in the sum of FIVE MILLION, FIVE THOUSAND, SEVEN HUNDRED SIXTY EIGHT DOLLARS & 89/100 (**\$5,005,768.89**), together with the costs and disbursements incurred in the prosecution of this action.

DEMAND FOR TRIAL BY JURY

____ The plaintiff hereby demands a trial by jury as to all issues in this action.

Dated: New York, New York
June 29, 2008

Yours, etc.
CAESAR & NAPOLI

Attorneys for Plaintiff
GUODING CHEN

By: /s/
Robert Stein

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